

**Testimony of the Clark Fork River Basin Task Force  
On DNRC Water Right Enforcement  
Before the Water Policy Interim Committee  
By Gerald Mueller, Task Force Facilitator  
September 8, 2010**

The Clark Fork River Basin Task Force is a statutory entity created pursuant to 85-2-350 to conduct water management planning for the Clark Fork River basin. Task Force members are appointed by the Director of the Montana Department of Natural Resources and Conservation to represent the basin in terms of geography and water interests. The list of current Task Force members is attached along with the provisions of 85-2-350.

Prior to the 2009 legislative session, the Task Force published a paper on the challenges facing the prior appropriation doctrine in the 21<sup>st</sup> century in Montana. One of the challenges identified was administration and enforcement of water rights. The paper noted that a water right that cannot be defined, enforced, protected, and/or changed, has little or no value. Montana relies on the judicial system and contested case administrative processes rather than a centralized system for adjudicating, enforcing, protecting, and making changes to water rights. Much of this burden falls on individual water right holders. This burden can literally take years and tens of thousands of dollars.

You have heard that while DNRC has water right enforcement authority and does investigate complaints, the spread sheet supplied by the department lists only one enforcement action in District Court since 2008. The Task Force urges DNRC to exercise its existing enforcement authority. To do this, the department must have adequate funding and staffing levels. We also urge this committee to look into post-adjudication administrative and enforcement during the next interim.

Thank you.

## Clark Fork River Basin Task Force

Name	Organization	Area/Interest Represented
Marc Spratt	Flathead Conservation District	Flathead Basin above Flathead Lake
Nate Hall	Avista	Hydropower Utilities
Holly Franz	PPL Montana	Hydropower Utilities
Gail Patton	Sanders County Commissioner	Basin Local Governments
Arvid Hiller	Mountain Water Company	Municipal water companies and the Clark Fork River Watershed between the confluence of the Blackfoot River and the Clark Fork River and the confluence of the Clark Fork River and the Flathead River
Caryn Miske	Flathead Basin Commission	Flathead Lake
Ted Williams	Flathead Lakers	Flathead Lake
Steve Hughes	Joint Board of Control	Flathead River watershed below Flathead Lake to the confluence with the Clark Fork River
Harvey Hackett	Bitter Root Water Forum	Bitterroot River watershed
Fred Lurie	Blackfoot Challenge	Blackfoot River watershed
Jim Dinsmore	Granite Conservation District & Upper Clark Fork River Basin Steering Committee	Upper Clark Fork River watershed
Brianna Randall	Clark Fork Coalition	Conservation/environmental organizations
Charles Lapp	Flathead Building Association	Building industry in the Flathead Valley and Lake County
Verdell Jackson, <i>Ex Officio</i>	State Senator	Senate District 5
Dave Wanzenried, <i>Ex Officio</i>	State Senator	Senate District 49

85-2-350. Clark Fork River basin task force -- duties -- water management plan. (1) The governor's office shall designate an appropriate entity to convene and coordinate a Clark Fork River basin task force to prepare proposed amendments to the state water plan provided for under 85-1-203 related to the Clark Fork River basin. The designated appropriate entity shall:

(a) identify the individuals and organizations, public, tribal, and private, that are interested in or affected by water management in the Clark Fork River basin;

(b) provide advice and assistance in selecting representatives to serve on the task force;

(c) develop, in consultation with the task force, appropriate opportunities for public participation in studies of water management in the Clark Fork River basin; and

(d) ensure that all watershed and viewpoints within the basin are adequately represented on the task force, including a representation from the following:

(i) the reach of the Clark Fork River in Montana below its confluence with the Flathead River;

(ii) the Flathead River basin, including Flathead Lake, from Flathead Lake to the confluence of the Flathead River and the Clark Fork River;

(iii) the Flathead River basin upstream from Flathead Lake;

(iv) the reach of the Clark Fork River between the confluence of the Blackfoot River and the Clark Fork River and the confluence of the Clark Fork River and the Flathead River;

(v) the Bitterroot River basin as defined in 85-2-344; and

(vi) the Upper Clark Fork River basin as defined in 85-2-335.

(2) Task force members shall serve 2-year terms and may serve more than one term. The Confederated Salish and Kootenai tribal government must have the right to appoint a representative to the task force.

(3) The task force shall:

(a) identify short-term and long-term water management issues and problems and alternatives for resolving any issues or problems identified;

(b) identify data gaps regarding basin water resources, especially ground water;

(c) coordinate water management by local basin watershed groups, water user organizations, and individual water users to ensure long-term sustainable water use;

(d) provide a forum for all interests to communicate about water issues;

(e) advise government agencies about water management and permitting activities in the Clark Fork River basin;

(f) consult with local and tribal governments within the Clark Fork River basin;

(g) make recommendations, if recommendations are considered necessary, to the department for consideration as amendments to the state water plan provided for under 85-1-203 related to the Clark Fork River basin; and

(h) report to:

(i) the department on a periodic basis;

(ii) the environmental quality council annually; and

(iii) the natural resources and commerce appropriations subcommittee each legislative session.

History: En. Sec. 1, Ch. 447, L. 2001; amd. Sec. 1, Ch. 434, L. 2005.